IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4.7.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.668 of 1993

V.Lakshmikandan .. Petitioner

vs.

Tamil Nadu Civil Supplies Corpn.Ltd.
Rep., by its Chairman-cum-Managing Director
42 Thambuswamy Road
Madras-600 010
.. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari, calling for the records relating to the proceedings No.Ka.Ka.G5/116268/90 dated 22.12.92 of the respondent and quash the same.

For Petitioner : Mr.S.Venkataraman
For Respondent : Mr.V.Selvanayagam

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari, calling for the records relating to the proceedings No.Ka.Ka.G5/116268/90 dated 22.12.92 of the respondent and quash the same.

2.This writ petition has been filed challenging the order of the respondent dated 22.12.1992 by which the petitioner was dismissed from service from the respondent-corporation.

3.The petitioner joined the services of the respondent-corporation as Assistant Quality Inspector in January 1982. He was served with a charge memo dated 10.6.91 by the Senior Regional Manager when he was working in Ramanathapuram region. The charges contained in the charge memo related to the period November 1987 when he was working in Mobile Direct Purchase Centre, Sirkali.

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The gist of the charge memo is that the writ petitioner acted as an instrument in misappropriating 180 bags or spillage paddy collected at the Rail Head Sirkali by Thiru R.Kanagasundaram, Quality Inspector and thereby he caused the respondent-corporation and the Government to incur heavy loss to the tune of Rs.19034.35and Rs.4,637.50 respectively. It is further alleged that the writ petitioner by misusing his official position prepared bogus bills as if the paddy was purchased and moved.

4.The Senior Regional Manager in his charge memo dated 10.6.1991 framed nine charges against the writ petitioner, which are as under:

"Charge No.1

That by misusing his official position as mobile Asst. Quality Inspector, on 9.11.87 he had prepared bogus Truck; memo bearing No.142785 as if 190 bags of TKM 9 variety paddy was moved from Sankaranpandal village contrary to the facts, through the lorry No.TDF 2529, with the connivance of Thiru R.Kanagasundaram, Quality Inspector, Rail Head, Sirkali Thiru Abdul Azeem Asst. Quality Inspector, Rail Head, Sirkali and Thiru Dasarathan of Arasur Village.

Charge No.2

That to suit his convenience with an object of achieving personal benefit, he had prepared the Truck memo No.142785 dt.9.11.87 without noting the time of departure of lorry TDF 2529 from Sankaranpandal and without a certificate about the tarpaulin coverage and seals and this violated the instructions.

Charge No.3

That fully knowing the fact that the alleged seller of the paddy is a paddy dealer not owning any land at Sankaranpandal village, he had issued fertiliser coupon bearing No.960553 dt.17.11.87 for a sum of Rs.4637.50 for which the dealer was not entitled as per the orders of the Government and thus committed an irregularity.

Charge No.4:

That contrary to the purchase procedure, he had created the truck memo No.42785 dt.9.11.87 as if 190 bags of paddy was moved, whereas the purchase bill was made on 17.11.87 as per Bill No.460755 dt.17.11.87.

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Charge No.5:

That fully knowing the fact that the paddy brought through the lorry No.TDF 2529 by Thiru Dasarathan is the paddy misappropriated by Thiru R.Kanagasundaram, Quality Inspector, Rail Head, Sirkali with connivance of Thiru Abdul Azeem, Asst. Quality Inspector, Rail Head Sirkali from the Rail Head, by his collusion he had created bogus records viz., truck memo No.142785 and purchase bill No.460755 and committed an irregularity.

Charge No.6

That by misusing his official position he has created bogus records as if the 190 bags were purchased and thereby caused the TNCSC Ltd., a loss of Rs.18560/- being the cost of 180 bags of paddy misappropriated at Rail Head, Sirkali.

Charge No.7:

That for this fraudulent transaction he had issued fertilizer coupon bearing No.960553, dt.17.11.87 for a sum of Rs.4637.50 causing the Government of Tamil Nadu a loss of Rs.4637.50 ps

Charge No.8:

That by creating the bogus records, he has enabled M/s.Selvam Transport, Sirkali to receive a sum of Rs.474.35 towards transport charges and thereby caused the TNCSC Ltd., to incur a loss of said amount.

Charge No.9:

That he has procured paddy through the paddy dealer Thiru R.Dasaradhan, which is prohibited during monopoly procurement period."

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5.By his explanation dated 25.6.1991 the writ petitioner denied all the charges. Subsequently an enquiry was conducted and consequent to the completion of the enquiry, the enquiry officer submitted his report to the Senior Regional Manager who by memo dated 5.6.92, enclosed the findings of the enquiry officer and directed the writ petitioner to submit his explanation. The writ petitioner has also submitted his explanation on 22.7.92 to the findings of the enquiry officer. On 22.12.92, the Chairman-cum-

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Managing Director passed the impugned order dismissing the writ petitioner from service and aggrieved by the same, the writ petitioner has filed the above writ petition.

6.The respondent-corporation filed a counter affidavit justifying the order of dismissal passed by the Chairman-cum-Managing Director and also questioning the maintainability of the writ petition itself, as the same has been filed without exhausting the appeal remedy as mentioned in the impugned order.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondent-corporation. I have also perused the documents and the judgments referred to by them in support of their submissions.

8.The learned counsel for the petitioner submitted that the Senior Regional Manager, Thanjavur Region is the disciplinary authority and it is he who issued the charge memo, appointed the enquiry officer, received the enquiry report and forwarded the same to the petitioner for further explanation. But the impugned order of dismissal was passed by the Chairman-cum-Managing Director who is the appellate authority and therefore the impugned order is liable to be set aside. The learned counsel further submitted that the enquiry conducted by the Department is not in consonance with the Regulation 4 Chapter V of the Corporation Service Regulations 1989 and no evidence was let in either oral or documentary and therefore the impugned order of dismissal is to be set aside. The learned counsel further urged that as the appellate authority has himself passed the order of dismissal, and even though it was indicated that an appeal would lie to the Board of Directors, the writ petitioner is justified in approaching the court as the Board of Directors would be influenced by the conduct of the Chairman-cum-Managing Director, who is also the Chairman of the Board of Directors. The learned counsel relied on the following decisions in support of his submissions:

(1)1991(2)LLJ 511 (K.Rajendran v. T.N.Handicrafts Devt.Corp.Ltd. & Anr)
(2)An unreported judgment dated 27.3.98 made in W.P.No.7740/1988 (B.Kumaradhas v. The Tamil Nadu Civil Supplies Corporation Ltd., rep., by its Senior Regional Manager & anr.)
(3)Another unreported judgment dated 18.9.2003 made in W.A.No.2430/03 (Tamil Nadu Civil Supplies Corpn.Ltd.& anr. v. C.Nataraja Pillai)

9.per contra the learned counsel for the respondent-corporation submitted that the procedure contemplated under the service regulations are complied with and another employee by name R.Kanagasundaram, Class II employee was also involved, for whom the disciplinary authority is the Chairman-cum-Managing Director,

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the entire papers including that of the writ petitioner were sent to Chairman-cum-Managing Director who passed the final orders in respect of all the persons who are involved in the matter. Therefore the learned counsel submitted that there is nothing wrong in the order passed by the Chairman-cum-Managing Director especially when an appeal remedy was provided to the writ petitioner.

10.I have considered the rival submissions with regard to facts and citations.

11.The main grounds urged by the learned counsel for the petitioner are that-

(1)there was no evidence let in by the respondent-corporation to prove the guilt of the writ petitioner;

(2)enquiry was not conducted in accordance with the service regulation; and

(3)the Chairman-cum-Managing Director who is the appellate authority ought not to have passed an order when the Regional Manager is the disciplinary authority.

12.Now let me consider whether the enquiry was properly conducted and whether there was no evidence to hold the petitioner guilty.

13.The findings of the enquiry officer would reveal that he has perused the office copy of the Truck memo, the gate register maintained in the Modern Rice Mill, the statement of the person concerned to the vigilance department, the statement of the VAO, the purchase bills and the fertilizer coupon and on that basis, the enquiry officer held that the charges are proved. Therefore it cannot be contended that the findings of the enquiry officer are not based on any evidence. In fact, no objection was raised by the writ petitioner in his explanation dated 22.7.1992 that enquiry was not conducted in accordance with law. Only on 5.8.92, after the enquiry was closed, the findings were given to him for submitting his explanation and after submitting his explanation dated 22.7.92 to the findings of the enquiry officer, the writ petitioner by letter dated 5.8.92 requested the Senior Regional Manager for re-enquiry as he did not cross-examine the witnesses with the documents produced in the enquiry. Therefore it is made clear that the writ petitioner did not have any query in this regard even after submitting his explanation to the findings of the enquiry officer.

14.Further, Chapter V of the Tamil Nadu Civil Supplies Corporation Ltd., employees service regulations, 1989 deals with disciplinary proceedings, penalties and appeal regulations. Regulation 4 of Charter V deals with the procedure to award major penalties.

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15.As per Regulation 4, Chapter V, the competent authority to impose the major penalty shall issue a memo recording the basis of the charge and shall appoint an enquiry officer to conduct an objective enquiry into the charges in the presence of the delinquent. At the enquiry the documents relied upon in the charge memo should be made available to the delinquent. The witnesses whose versions form the basis of the charges should be examined providing opportunity to the delinquent to cross-examine. The delinquent may also produce his witnesses and he may be permitted to file the written statement. Thereafter the enquiry officer, after summarising the proceedings and analysing the evidence give his findings on the charges framed without recording the quantum of punishment. On receipt of the findings of the enquiry officer, the copy of the same is to be forwarded to the delinquent to file his further explanation. After perusing the entire records, the authority competent to impose the penalty shall decide whether each and every charge could be held proved or not. After taking such a decision, the competent authority decide on the quantum of punishment and the order shall conclude indicating the time allowed for appeal before the appellate authority.

16.If the facts of the present case are juxtaposed with the procedure to avoid major penalty as contemplated under Regulation 4, Chapter V, it cannot be said that the disciplinary proceedings were not conducted in accordance with Regulation 4.

17.It is true that the charge memo does not inform the list of documents and the list of witnesses, but it does not mean that the entire proceedings are vitiated on that score. It is not the case of the writ petitioner that the documents relied on by the Corporation were not made available to him and he was not permitted to cross-examine the witnesses. In fact, the writ petitioner himself did not choose to cross-examine the witnesses even after submitting his further explanation to the findings of the enquiry officer on 22.7.92. Only on 5.8.92, he made such a request asking for re-enquiry and therefore it is very clear that it is only an afterthought. Hence I am of the considered view that the procedure contemplated under Regulation 4, Chapter V are substantially complied with by the respondent-corporation.

18.It is settled law that under Article 226 of the Constitution of India, this court cannot go into the decision of the disciplinary authority and it can only go into the decision making process to find out whether reasonable opportunity has been afforded to the delinquent and the procedures contemplated are complied with. It is also a trite law that in a disciplinary proceeding, the department is not expected to prove the guilt of

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the delinquent beyond any doubt as in criminal court and it is sufficient if the preponderance of probabilities is proved. Therefore I do not find any illegality nor infirmity nor perversity in the order of dismissal, impugned in this writ petition.

19.Insofar as the Chairman-cum-Managing Director (appellate authority) himself passing the order of dismissal is concerned, no exception could be taken in this regard. It is explained in the counter that along with the writ petitioner some other persons were also involved out of whom one is a Class-II officer for whom the disciplinary authority is the Chairman-cum-Managing Director and therefore the entire papers including that of the writ petitioner were placed before him.

20.Further it is only when an officer lesser in rank than the competent authority passes an order of punishment, the order is said to be bad. Not in a case where the appellate authority passes an order of punishment if an appeal remedy is provided to a further superior authority. The underlying principle in this regard is that the delinquent employee should be provided with at least one remedy of appeal and that should not be deprived to him.

21.In the present case even though the impugned order was passed by the Chairman-cum-Managing Director, the appellate authority, it clearly points out that the writ petitioner could file an appeal to the Board of Directors within 60 days from the date of receipt of the order. Therefore the writ petitioner was not deprived of the appeal remedy and in such circumstances the impugned order of dismissal cannot be held to be bad on the ground that the same was passed by the appellate authority.

22.Now let me consider the decisions relied on by the learned counsel for the petitioner.

23.In 1991(2)LLJ 511 (cited supra), this court held that the service rules are mandatory in nature and whether the employee demanded an enquiry or not the employer must have the support of satisfactory evidence recorded at an enquiry held for that purpose. This court further held that in view of the fact that the Chairman himself passed the impugned order, the appeal to the Board presided over by the Chairman himself, cannot be considered as an effective alternative remedy and therefore the writ petition cannot be dismissed on the ground of existence of alternative remedy.

24.This decision is not useful to the petitioner herein because in the above matter, the learned Judge of this court held that no evidence was recorded at the enquiry to prove the act of misconduct alleged against the delinquent. The facts in the present case are different and I have already referred to the

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evidence relied on by the enquiry officer for coming to his conclusion. Further, only when the Chairman presides over the Board of Directors while dealing with appeal, the appeal remedy is not an effective alternative remedy. If the Board minus the Chairman hears and disposes of the appeal, it cannot be said that it is not an effective alternative remedy. In fact having passed the impugned order, the Chairman-cum-Managing Director ought not to preside over the Board while dealing with the appeal preferred against his own order.

25.In W.P.No.7740/1988 (cited supra), the learned Single Judge of this court quashed the order of dismissal on the ground that the past conduct of the delinquent was also relied on by the disciplinary authority for imposing the punishment of termination from service. While quashing the order of the learned Judge after considering the fact that 15 years have lapsed since the legal battle began, did not permit the respondent-corporation to proceed with the enquiry afresh and consequently directed reinstatement of the writ petitioner.

26.This decision is also not helpful to the petitioner herein because in the impugned order his past conduct was not at all relied on by the Chairman-cum-Managing Director while imposing the punishment of dismissal.

27.In Writ Appeal No.2430/2003, a Division Bench of this court had an occasion to deal with regulation 4 of Chapter V of the service Regulations of the respondent-corporation. The Division Bench held that the regulations bind the Board, the employer and the employees. Since the regulations were breached in that case as held by the learned Single Judge, the Division Bench upheld the order of the Single Judge setting aside the impugned order.

28.This decision is also not supporting the case of the writ petitioner as I have held that regulation 4 of Chapter V of the service Regulations of the respondent-corporation were substantially complied with by the respondent-corporation.

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29.In the result, there are no merits in the writ petition and the same is dismissed. No costs.

sks

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Chairman-cum-Managing Director
Tamil Nadu Civil Supplies Corpn.Ltd.
42 Thambuswamy Road
Madras-600 010

+ one cc to Mr. P. Venkataraman, Advocate sr no. 40444
+ one cc to Mr. V. Selvanayagam, Advocate sr no. 40046

sr(co)
nm(19.07.07)

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